STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-4982

September 11, 1987

No. 87/71

TO COUNTY ASSESSORS:

PROPOSITION 60
CHAPTER 186, STATUTES OF 1987
(ASSEMBLY BILL 60)

Chapter 186 of the Statutes of 1987 (Assembly Bill 60) implements Proposition 60 on the November 1986 ballot by adding Section 69.5 to the Revenue and Taxation Code to provide for transfers of base-year values by homeowners who are at least age 55, under certain circumstances.

This letter will highlight the key elements added to the Revenue and Taxation Code by the legislation, followed by a series of questions and answers. A copy of the chaptered legislation is included for your use.

Key Elements

Section 69.5 allows qualified homeowners to transfer the base-year value of their present principal residence to a replacement dwelling provided that:

1. Both properties are located in the same county.

2. As of the date of transfer of the original property, the transferor (seller) is at least 55 years of age. (If married, only one spouse need be at least 55, but must reside in the residence; if co-owners, only one co-owner need be at least 55 and must reside in the residence.)

3. The original property was eligible for the Homeowners' Exemption when sold (if however, the replacement dwelling is acquired first, then the original property or the replacement dwelling must be qualified for a Homeowners' Exemption as of the date of sale of the original property), and the replacement dwelling is eligible for the Homeowners' Exemption after purchase, as a result of the claimant's occupancy as his/her principal residence. In addition, property currently receiving the Disabled Veterans' Exemption is eligible for Chapter 186 benefits in accordance with Section 69.5(g)(10) of the Revenue and Taxation Code.

4. The replacement dwelling is purchased or newly constructed on or after November 6, 1986, and within two years of the sale of the original property.

5. The replacement dwelling value is equal to or less than the value of the original property.

6. The claimant and/or claimant's spouse or any co-owner has not previously been granted the property tax relief provided by Section 69.5.

7. The claimant files a claim for relief under this section within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

Further:

1. The State Board of Equalization will design the form for claiming eligibility.

2. Property tax relief under this section includes, but is not limited to: single-family residences; cooperative housing corporation units or lots; community apartment projects; condominium projects; planned unit development projects; mobilehomes; and owners' living units that are a portion of a larger structure, all as prescribed in subdivisions (c)(1) and (2) of Section 69.5.

3. Assessors must furnish the State Board of Equalization with the appropriate information so that the Board can ensure that multiple claims under this program will be prevented. Forms for this information are currently being developed and will be forwarded as soon as possible.

The following questions and answers represent the most frequently received inquiries regarding the implementation of Proposition 60 by Chapter 186.

1. Question

If an original property is sold for $100,000 and a replacement dwelling is purchased for $106,000 less than a year later, does the replacement dwelling qualify for relief under Section 69.5?

Answer

Assuming $100,000 was the current market value of the original property and that $106,000 was the current market value of the replacement dwelling at the time of sale, the answer is no. The replacement dwelling is totally disqualified for property tax relief since, in this case, the replacement dwelling market value exceeded 105 percent of the original property's market value (see Section 69.5(g),(5),(B)). The following examples illustrate various situations involving qualification value requirements.

	Date Of Sale	Market Value	Equal or Lesser Value Factor		Allowable Replacement Dwelling Value
Situation One	(Replacement acquired after sale)				
Original Property	1-17-87	$100,00	x1.05 (within 1st year)	=	$105,000
Replacement Property	6-10-87	$106,000	→		NOT QUALIFIED
Situation Two	(Replacement acquired prior to sale)				
Original Property	1-17-87	$100,000	x1.0 (prior to)	=	$100,000
Replacement Property	12-15-86	$106,000	→		NOT QUALIFIED
Situation Three	(Replacement acquired after sale)				
Original Property	1-17-87	$100,000	x1.10 (within 2nd year)	=	$110,000
Replacement Property	2-21-88	$106,000	→		QUALIFIED
Situation Four:	(Replacement acquired prior to sale)				
Original Property	4-17-87	$100,000	x1.0 (prior to)	=	$100,000
Replacement Property	12-5-86	$98,500	→		QUALIFIED

2. Question

If a qualified claimant first sells his/her original property and then transfers its existing factored base year value of $60,000 to a subsequently acquired replacement dwelling that has an existing taxable value on the roll of $40,000, should a supplemental assessment be levied for $20,000 as of the date of purchase of the replacement property?

Answer

Yes, assuming the current market value of the replacement dwelling exceeds the new base-year value which resulted from a change of ownership of the replacement dwelling. Although the new base-year value was transferred from the original property, it results in a supplemental assessment for the difference between the new base-year value and the current roll value, or $20,000.

3. Question

In the reverse situation from that described in Question No. 2 above, where the original property's base-year value is $40,000 and the replacement property's base-year value is $60,000, should a negative supplemental assessment resulting in a refund be calculated for $20,000 as of the date of purchase of the replacement property?

Answer

Yes. Pursuant to Revenue and Taxtion Code Section 75, supplemental assessments, both negative and positive, must be calculated for situations such as described here and in Question No. 2.

4. Question

When the value comparisons are made to determine qualification, should a deduction be made from the existing factored base year value of an original property being transferred to a replacement dwelling, when the original property differs from the replacement dwelling by having, for example, a swimming pool while the replacement property does not?

Answer

No. It is clear from the language of the bill that the property to be compared is the property occupied as the claimant's principal residence in total which qualifies for the Homeowners' Exemption including, in this case, the swimming pool.

An original property which had a second residence on the lot that was a rental, however, could have an adjustment made to the existing factored base year value being transferred to a replacement property to adjust for the rental residence and that portion of land used to support the second unit since that portion was not occupied by the claimant as his/her principal residence.

5. Question

Can the benefits of Section 69.5 apply where the transfer of the original property is excluded from change in ownership because it is, for example, an interspousal or parent-child transfer or is a transfer to the owner's wholly-owned corporation?

Answer

No. Section 69.5,(e) states, in pertinent part,

"This section shall not apply in any case in which the transfer of the original property is not a change in ownership which subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803." Therefore, the replacement property should be reappraised.

6. Question

Will the transfer of an original property or a replacement dwelling by gift or devise qualify for property tax relief under Section 69.5?

Answer

No. Section 69.5 requires a "sale" of the original property and a "purchase" of a replacement dwelling. "Sale" is defined as "any change in ownership of the original property for consideration" (Section 69.5 (g), (8)), and "purchase" is defined as "a change in ownership for consideration" (Section 67).

7. Question

When a replacement dwelling that has received Section 69.5 benefits subsequently resells, how is the transfer handled?

Answer

The dwelling is reappraised as of the date of the latest sale. The appraised value is compared to the existing taxable value reflecting the Section 69.5 benefits, and a supplemental assessment is enrolled for the difference as of the date of the sale.

8. Question

Given the following facts, what actions should the assessor take as of December 1, 1987? What is his/her authority?

Facts:

a. The replacement dwelling was acquired on May 10, 1987, prior to the sale of the original dwelling.

b. The assessor reappraised the replacement dwelling and issued a supplemental roll assessment as of June 1, 1987 for both the remainder of the fiscal year plus the next full year.

c. The original dwelling, which has a much lower base-year value, is then sold on November 20, 1987 for an amount equal to or slightly greater than the replacement dwelling value.

d. A timely claim is filed under Section 69.5.

Answer

Although there is no authority in the supplemental roll statutes to initiate a second assessment for the replacement dwelling without a change in ownership or new construction occurring, an adjustment of the base-year value of the replacement dwelling to reflect the transferred base-year value of the original property is authorized by subdivision (h) of Section 69.5.

Section (h) states:

> "Upon the timely filing of a claim, the assessor shall adjust the new base year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates;
>
> (1) The date the original property is sold.
>
> (2) The date the replacement dwelling is purchased.
>
> (3) The date the new construction of the replacement dwelling is completed.
>
> Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base year value."

Subdivision (h) provides independent authority to the assessor to make appropriate corrections to the base-year value reflected on the supplemental roll, or the regular 601 roll, in order to reflect the transferred base-year value as of the date the original property is sold (or such other date as is applicable).

9. Question

If a homeowner sells his/her original property and then purchases a replacement dwelling (all qualified for treatment under Section 69.5) with someone other than a spouse as a joint tenant, can he/she still receive tax relief under Section 69.5?

Answer

As long as one of the joint tenants (no matter how many there are) in this situation is a qualified claimant, then the factored base-year value of the original property can be transferred to one replacement dwelling. Subdivision (d) of Section 69.5 provides, however, that if two or more replacement dwellings are acquired by two or more co-owner eligible claimants, only one is eligible for relief.

10. Question

Can otherwise qualified nonspouse co-owners, "A" and "B", sell original property "Y" and qualify for treatment under Section 69.5 when "A" acquires replacement dwelling "Z"?

Answer

a. Yes, but only owner "A" can receive the benefit of Section 69.5 on dwelling "Z" for the transaction. "B" has forfeited any right for benefit for this transaction; however, "B" may still qualify under a totally different transaction. In other words, owner "B" has not lost his/her right to a future claim on an unrelated transaction since he/she never received any Section 69.5 beneift from the property "Y"/"Z" transaction.

11. Question

Can otherwise qualified co-owners, "A" and "B", sell original property "X" (a duplex which they occupy one side each), acquire a single-family replacement dwelling each, "Y" and "Z", and still qualify?

Answer

Yes, but the value comparison must be made between their respective portions of original property "X" as compared to their replacement dwellings, "Y" and "Z".

12. Question

Can two otherwise qualified owners, "A" and "B", sell their separately owned and occupied properties, "X" and "Y", and then combine their claim for one replacement dwelling "Z"?

Answer

No. The base-year value of only one original property can be transferred to a replacement dwelling. "A" and "B" can both be claimants for the replacement dwelling, but cannot combine the base-year values of the original properties. They would have to choose which original property they want to be considered for comparison and subsequent value transfer.

13. Question

Can two otherwise qualified owners, "A" and "B", recently married to each other, subsequently sell their prior separately owned and occupied properties, "X" and "Y", and then combine their claim for one replacement dwelling "Z" together?

Answer

No. See Answer 12, above. There is no provision in the statute for combining claims when acquiring one replacement dwelling. "A" and "B" could qualify for two separate replacement dwellings provided that the replacement dwellings qualify as their separate principal places of residence and neither party is an owner of record on the other's replacement dwelling.

14. Question

Husband "A" and wife "B" claim and are granted the Section 69.5 exclusion. Subsequently, they divorce and "A" marries new wife "C" who has never applied for nor received the benefit of Section 69.5. "A" and "C", otherwise qualified, buy a replacement dwelling for "C's" original property. Can they qualify for a Section 69.5 benefit on wife "C's" claim.

Answer

If husband "A" is to be an owner of record of wife "C"s replacement dwelling at the time of acquisition, the answer is no because "A" is considered to be a claimant. However, if wife "C" applies for the benefit while husband "A" is not an owner of record on the replacement dwelling, then the answer is yes because as the sole claimant "C" has not previously received a Section 69.5 benefit. Further, once wife "C" has been granted the benefit, she can subsequently add husband "A" as an owner of record without affecting her claim.

15. Question

Given the following facts, is a taxpayer eligible for treatment under Section 69.5 when:

a. "A" acquires a lot on September 15, 1986 for $25,000 market (taxable) value; "A" then sells his/her original property (lot and dwelling) January 10, 1987 for $175,000 market (taxable) value; "A" then completes construction of the replacement dwelling on May 4, 1987 for $100,000 market (taxable) value. Meanwhile, the market value as of May 4, 1987 for the replacement property lot has risen to $35,000.

Answer

Yes, assuming "A" is otherwise qualified for treatment under Section 69.5. First, the "of equal or lesser value" test has been met. Since in this case the total value for comparison purposes, the replacement dwelling as of May 4, 1987 is $125,000 ($25,000 Land, $100,000 Improvements) while the market value (within the first year) for the original property is $175,000. Further, although the lot was purchased before, while the replacement dwelling was constructed after, the sale of the original property, both events took place within two years "of" the sale and qualify under the two-year time limit found in Subdivision (b)(5). In this instance the land of the replacement dwelling receives no Section 69.5 benefit as it was purchased prior to November 6, 1986. The factored base-year value of the original property improvement should be transferred as the base-year value of the replacement property improvement. The replacement dwelling land value is then added at its purchase date value to the transferred base-year value of the improvements for a total assessed value.

b. "B" sells his/her original property, a mobilehome (no lot), for $70,000 market (taxable) value on January 10, 1987. "B" then acquires a conventional house and lot for $70,000 market (taxable) value on March 10, 1987 as a replacement dwelling.

Answer

Yes, assuming taxpayer "B" is otherwise qualified for treatment under Section 69.5. Again, the "of equal or lesser value" test has been met since the market value for the replacement property is $70,000, it is within the 105 percent first year value limit of the original property. The factored base-year value of the mobilehome may then be transferred to the replacement property house and lot, maintaining the same ratio for land and improvements as reflected in the market value.

EXAMPLE:

Allocation of Improvement Value of Original Property To Land and Improvement Value of Replacement Dwelling.

	Factored Base Year Value	Market Value as of 1-10-87	Market Value as of 3-10-87	Ratio L&I to total property	Allocation of F.B.Y.V. to replacement property
Original Property (Mobilehome)	$35,000	$70,000	N/A	N/A	
Replacement Dwelling (Includes House and Lot)	N/A	N/A	$ 70,000		$35000
			L-$20,000	.29	x$35000 = $10150
			I-$50,000	.71	x$35000 = $24850

16. Question

What is the proper treatment of new construction that is added to a qualified replacement dwelling after its purchase but within two years of the sale of the original property?

Answer

The date that a claimant files for the Section 69.5 benefits and the type of new construction involved must be considered.

The statute specifically allows for new construction to replace the original dwelling. Therefore, if a claimant buys a lot and proceeds to build a replacement dwelling, the assessor must determine when that dwelling is complete, regardless of when the claimant files for the benefit (within three years of completion). This must be done to prevent someone from starting construction on a larger more valuable improvement, but asking the assessor to compare when it is only partially complete in order to have a lower replacement dwelling value for comparison purposes.

In a different situation where the claimant has purchased a house and lot "package" and has taken out a building permit for an addition, but meanwhile has filed a Section 69.5 claim, the assessor should disregard the building permit and compare the two properties as they were when they were sold and purchased. If and when the addition is subsequently completed, the assessor would then add its value as new construction to the transferred base-year value.

17. Question

Has a claimant lost his/her Section 69.5 eligibility when he/she acquires a replacement dwelling first, occupies it and receives a Homeowners' Exemption, then almost two years later sells the original property which no longer has a Homeowners' Exemption?

Answer

No. The legislative intent is that the provisions of this bill be construed liberally in the taxpayer's favor. Obviously, in this situation, the taxpayer cannot qualify at the same time for a Homeowners' Exemption on both properties. Since the claimant did previously qualify for the Homeowners' Exemption on the original property as well as currently qualifying on the replacement dwelling, the benefits of Section 69.5 should be granted, assuming the claimant is otherwise qualified and the original property was merely held for sale without any other intervening use.

18. Question

Can an original property mobilehome qualify for Section 69.5 treatment when a replacement property is acquired?

Answer

Yes, but only if the mobilehome is enrolled as real property. If it is not, then the mobilehome is not eligible since there is no real property base-year value to be transferred. In keeping with legislative intent, were a taxpayer to convert his/her mobilehome from vehicle license fee status to real property taxation status, in anticipation of Section 69.5 applications, a claim should be allowed, assuming the claimant is otherwise qualified.

We hope the foregoing information proves helpful in implementing the provisions of Section 69.5 of the Revenue and Taxation Code. If you have any questions regarding the implementation of this legislation, please contact our Real Property Technical Services Section at (916) 445-4982.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

VW:wpc
Enclosure
AL-19A-0042M

STATE OF CALIFORNIA

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Controller, Sacramento
DOUGLAS D. BELL
Executive Secretary

January 14, 1988

Attorney at Law

, CA

Dear Mr. :

Re: Request for Legal Opinion
Revenue and Taxation Code Section 69.5

This is in response to your letter of December 17, 1987 to Mr. Richard Ochsner in which you request our opinion regarding the applicability of Revenue and Taxation Code section 69.5 to the following facts contained in your letter.

Dorothy , age 55, owns a house in County which she has occupied as her personal residence for over ten years. The residence qualifies for the homeowners' exemption under article XIII of the California Constitution. The house has recently been sold for $220,000 and escrow is expected to close shortly. The address of the house is CA.

Dorothy anticipates the purchase of a replacement residence in County for $189,000. The residence will be acquired jointly with Raymond as equal tenants in common. Both Dorothy and Raymond will begin to occupy the new residence after November 6, 1986 and within two years of the sale of the residence. The new residence is eligible for the homeowners' exemption.

Dorothy has not previously requested property tax relief as provided under section 69.5 of the Revenue and Taxation Code.

Based on the foregoing, you ask "whether the property acquired in replacement of the property qualifies under Revenue and Taxation Code Section 69.5 for a transfer of the base year value of the property for property tax purposes where Dorothy acquires the replacement residence as a joint tenant."

3

Enclosed for your information is a letter from the Board to County Assessors dated September 11, 1987, No. 87/71. Your attention is invited to question 9 which is essentially the same question you have asked here. As you will note, the benefits are available where the replacement property is acquired in joint tenancy as long as all other requirements of section 69.5 are satisfied as the facts indicate is the case here.

I note that the one part of your letter indicates that Dorothy is to be an equal tenant in common with respect to the replacement property while another part indicates that she is to be a joint tenant. In our view the result is the same under section 69.5 regardless of whether she will be a tenant in common or a joint tenant.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the County Assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

If you have any further questions regarding this matter, please let us know.

Very truly yours,

Eric F. Eisenlauer

Eric F. Eisenlauer
Tax Counsel

EFE:cb
0858D

Enclosure

cc: Hon.
Assessor of County
Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton

STATE OF CALIFORNIA

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October 7, 1987

Mr. Stephen R. Sara
Chief, Appraisal Division
Alameda County Assessor's Office
1221 Oak Street, Room 145
Oakland, CA 94612

Dear Stephen:

This is in response to your letter of September 21st requesting advice regarding two questions relating to the implementation of Propositions 58 and 60.

1) Your first question relates to section 69.5 of the Revenue and Taxation Code as added by Chapter 186 of the Statutes of 1987 (AB 60 - implementing Prop. 60). You state that a claimant sold his original property as a sole owner and purchased a replacement dwelling of lesser value as a tenant in common with a 90% interest along with another individual having a 10% interest. Both parties are over 55 years of age. Referring to question 9 of Assessors' Letter 87/71, which states that a claimant who sells his original property and purchases a replacement dwelling as a joint tenant with someone other than a spouse will qualify under section 69.5, you ask whether the result will be the same if the interest is a tenancy in common.

The answer is Yes. A claimant who otherwise qualifies for relief will not be denied the benefits of section 69.5 if that person has a coownership interest (either joint tenancy or tenancy in common) in the replacement dwelling. Even though the claimant may have been the sole owner of the original property, the provisions of section 69.5 permit the claimant to receive relief on the replacement dwelling which is the claimant's principal place of residence in which the claimant has an ownership interest. Nothing in section 69.5 seems to require that this be a sole ownership interest. One of the primary requirements for the benefit is that the claimant be an owner of the replacement dwelling and occupy it as his or her principal place of residence and, as a result thereof, the property be currently eligible for the homeowners' exemption. Under the current homeowners' exemption provisions, the exemption will be granted even though the person residing on the property is not its sole owner. Thus, as long as the

replacement dwelling qualifies for the homeowners' exemption because it is the claimant's principal place of residence, the property can also qualify for section 69.5 benefits.

As a second part of this question, you ask how we feel Revenue and Taxation Code section 69.5, subdivision (d), limits the transfer of a coownership interest where the proportional ownership interests change in the replacement dwelling. Presumably, you are referring to subdivision (d)(1) which states that where the claimant was coowner of the original property and a single replacement dwelling is purchased by all of the coowners, and each coowner retains the same proportional interest in the replacement dwelling, the claimant shall be eligible for relief whether or not any of the remaining coowners would otherwise be eligible claimants. We certainly agree that where the coowners retain the same proportional interests, there is no reason why the claimant should not qualify for the benefit. The problem with the language of subdivision (d)(1) is that it implies, but does not directly state, that the claimant's eligibility might be affected if the coowners did not retain the same proportional interests. Because this is merely an inference and not a direct statement, I am not sure that this is what the Legislature actually intended by this language. Although it is apparent that one might reach a contrary conclusion, we believe this language should be interpreted in such a way as to be consistent with the conclusions stated above. That is, we accept the express statement made in subdivision (d)(1) but not the implication that benefits will be denied if the proportional interests are not retained. This is just one of a number of areas in the statute which needs further legislative clarification.

You also ask how we reconcile the answers given to questions 10 and 11 in Assessors' Letter 87/71 to the requirements of subdivision (d).

Question 10 deals specifically with the situation described in subdivision (d)(2) where two or more coowners sell a single original property and purchase two or more replacement dwellings. In order to prevent multiple benefits, subdivision (d)(2) provides that only one coowner will be eligible for relief and it is up to the coowners to determine who will get the relief. Question 9 is not inconsistent with this limitation since it deals with a situation where only one property will receive relief.

Question 11 deals with the problems arising from a multiple unit dwelling, such as a duplex. The question is whether the duplex should be viewed as a single dwelling or a multiple

dwelling. Part of the language of Proposition 60 states that a two-unit dwelling will be treated as two single-family dwellings. In light of this and the requirements of section 69.5 relating to the homeowners' exemption which apply only to the portion of a structure actually occupied as the principal residence, we have concluded that multiple-unit dwellings should be viewed as separate properties for purposes of analysis. Again, while this interpretation appears to be supported by portions of the section, some of the language in subdivision (d) should probably be clarified by further legislation in order to make this interpretation clear. The position stated in question 11 is consistent with the position stated in question 10 in that there is no doubling up of the benefit if each half of a duplex is viewed as a separate single-family residence.

2) Your second question relates to section 63.1 of the Revenue and Taxation Code, as added by Chapter 48 of the Statutes of 1987 (AB 47 - Prop. 58). You ask that we explain our reasoning for the position expressed in question 5 of Assessors' Letter 87/72 interpreting section 63.1 (d)(2)(C) relating to the allocation of the $1,000,000 exclusion. Question 5 deals with the situation where the full cash value of the real property transferred exceeds the $1,000,000 limit. The letter states that in this situation the transferee is required to allocate the exclusion and the first example describes the situation in which the property transferred includes both land and improvements and the transferee allocates all of the exclusion to the land. You suggest that our interpretation is in conflict with subdivision (e) of Revenue and Taxation Code section 51, defining "real property" for purposes of subdivisions (a) and (b) of that section. You also explained that it is difficult for the assessor to determine current market value of land and improvements separately for a single improved property.

LAW CHANGED

Our conclusion is based upon the express language of subdivision (d)(2)(C) of section 63.1 which provides:

> "If the full cash value of the real property purchased by or transferred to the transferee exceeds the permissible exclusion of the transferor or the combined permissible exclusion of the transferors, in the case of a purchase or transfer from two or more joint transferors, taking into account any previous purchases by or transfers to an eligible transferee of the same transferor or transferors, the transferee shall specify in his or her claim the amount and the allocation of the exclusion he or she is seeking." (Emphasis added.)

At the time the provisions of Chapter 48 were being developed, we discussed with the author's staff the problem of making allocations when the amount of property transferred exceeded the exclusion limit. It was recognized that there were three basic approaches possible. The first was to allow the allocation to be made by the assessor. The second was to specify by some statutory formula the method for allocation. And the third was to allow the transferee to make the allocation. The author chose the latter course and expressly mandated that the transferee specify in the claim for relief "the amount and the allocation of the exclusion he or she is seeking." This language gives unrestricted authority to make the allocation to the transferee, without any limitation. Our conclusion is based upon this fact. We find it difficult to infer some sort of limitation on the transferee's right to make the allocation when there is nothing in the statute to support such an inference.

It should be recognized that the definition of "real property" in subdivision (e) of section 51 is expressly limited to subdivisions (a) and (b) of that section and apparently has no application beyond that point. "Real property" is defined in subdivision (e) as that appraisal unit which persons in the marketplace commonly buy and sell as a unit, or which are normally valued separately. Even if this definition had a broader application, I don't believe it would support the conclusion you suggest. It is obvious that where the $1,000,000 exclusion must be allocated because the property transferred exceeds the limit, some division of the appraisal unit will be necessary. That is, the exclusion must be applied to something less than the whole appraisal unit. If that division must be made, nothing in subdivision (e) of section 51 suggests that the division must be made in one way to the exclusion of others. Thus, we find no support for requiring the method of allocation suggested in your letter. It seems to us that the method of allocation is left to the sole discretion of the transferee.

I might note that the language we are discussing giving the discretion to the transferee to make the allocation was put into the bill in the Assembly on February 17, 1987. I do not recall seeing or hearing any objection to this language from either representatives of the Assessors Association or the Board's staff until after the bill was enacted some four months later as Chapter 48. Thus, we all have had our chance to correct the problem but nobody seems to have recognized it. If it turns out that this language creates serious problems in the future, assessors may wish to suggest an amendment to the statute which will incorporate an approach which is easier to administer but which is still fair to the transferee of the property.

I trust the foregoing analysis will be helpful to you. Please call me if you have further questions.

Very truly yours,

Richard H. Ochsner
Assistant Chief Counsel

RHO:cb
0692D

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Mr. Dennis Miller
Mrs. Margaret S. Boatwright
Mr. Eric F. Eisenlauer